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BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
LAWRENCE FRICKE,

Appellant,

v.

SPOKANE COUNTY AIR POLLUTION
CONTROL AUTHORITY,

Respondent.

PCHB No. 643

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

THIS MATTER being an appeal of the denial of a turf grass base acreage increase request; having come on regularly for hearing before the Pollution Control Hearings Board on the 1st day of May, 1975, at Spokane, Washington; and appellant, Lawrence Fricke, appearing pro se and respondent, Spokane County Air Pollution Control Authority, appearing through James P. Emacio, deputy prosecuting attorney for Spokane County; and Board members present at the hearing being Chris Smith, presiding officer and Walt Woodward and the Board having considered the sworn testimony, exhibits, records and files herein, closing arguments and having entered on the 12th day of May, 1975,

1 its proposed Findings of Fact, Conclusions of Law and Order, and the
2 Board having served said proposed Findings, Conclusions and Order upon
3 all parties herein by certified mail, return receipt requested and twenty
4 days having elapsed from said service; and

5 The Board having received no exceptions to said proposed Findings,
6 Conclusions and Order; and the Board being fully advised in the premises;
7 now therefore,

8 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said proposed
9 Findings of Fact, Conclusions of Law and Order, dated the 12th day of May,
10 1975, and incorporated by this reference herein and attached hereto as
11 Exhibit A, are adopted and hereby entered as the Board's Final Findings
12 of Fact, Conclusions of Law and Order herein.

13 DONE at Lacey, Washington, this 11th day of June, 1975.

14 POLLUTION CONTROL HEARINGS BOARD

15 
16 CHRIS SMITH, Chairman

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19 WALT WOODWARD, Member

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26 FINAL FINDINGS OF FACT,
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AND ORDER

CERTIFICATION OF MAILING

I, LaRene Barlin, certify that I deposited in the United States mail, copies of the foregoing document on the 11th day of June, 1975, to each of the following-named parties, at the last known post office addresses, with the proper postage affixed to the respective envelopes:

Mr. Lawrence Fricke
Rockford, Washington 99030

Mr. James P. Emacio
Deputy Prosecuting Attorney
Spokane County Courthouse
West 1100 Mallon
Spokane, Washington 99201


LARENE BARLIN
POLLUTION CONTROL HEARINGS BOARD

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This matter, the appeal of the denial of a turf grass base acreage increase request, came before the Pollution Control Hearings Board (Chris Smith, presiding officer, and Walt Woodward) at an informal hearing in the Spokane facility of the State Department of Labor and Industries on May 1, 1975.

Appellant appeared pro se; respondent appeared through James P. Emacio, deputy prosecuting attorney for Spokane County. Edward Carr, Spokane court reporter, recorded the proceedings.

Witnesses were sworn and testified. Exhibits were admitted. Closing

EXHIBIT A

arguments were made.

From testimony heard, exhibits examined and arguments considered, the Pollution Control Hearings Board makes these

FINDINGS OF FACT

I.

Turf grass is a perennial and is not harvested for seed until its second year. The harvesting process leaves on the field straw, which is loose, and stubble, which remains fixed to the root structure and is part of the living plant. The burning apparently provides a stimulus to the plant.

There is a difference in the burning process between dryland and irrigated farms in Spokane County. The dryland soil tends to hold moisture longer. In turf grass seed production, this means that the dryland stubble will contain more moisture and, therefore, is more difficult to burn. Dryland seed farmers find it necessary to retain the straw to provide fuel for the fire; they do not remove the straw from the field prior to burning.

II.

Field burning produces smoke emissions, particularly when the straw is used as fuel. To control these emissions, the State Department of Ecology, acting pursuant to RCW 70.94, promulgated WAC 18-16 in 1972. It required (WAC 18-16-030(2)) that straw must be removed from fields after the seed harvest and prior to the burn. Dryland farmers protested this regulation. A series of meetings was held between farmers, representatives of the Department and representatives of respondent which had the authority, in Spokane County, to enforce WAC 18-16. As a

FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

1 result, WAC 18-16-030(2) was amended on December 31, 1973 to provide for
2 an alternate method of burning.

3 More meetings between farmers and government representatives were
4 held, resulting in an agreement on the details of an alternate method of
5 burning. This alternate, the essence of which was proposed by the
6 farmers, held that there would be the desired reduction of smoke emissions
7 if dryland farmers elected to use an acreage set-aside program.

8 Under the set-aside program, the farmer's base acreage would be
9 determined from applications for burning permits filed with respondent
10 for the years 1971, 1972 and 1973; respondent designated the largest
11 acreage application made in those three years as the base acreage. The
12 set-aside program called for the farmer not to burn an acreage equal to
13 20 percent of his base acreage; having agreed to that, the farmer then
14 was free to burn the remaining 80 percent of his base acreage without
15 removing the straw.

16 III.

17 Under date of May 3, 1974, respondent mailed to farmers who had
18 applied for burning permits in 1971, 1972 and 1973 an information
19 memorandum which explained the set-aside program. A State Department of
20 Ecology bulletin, mailed by respondent to all turf grass burning permit
21 applicants in and after 1972, warned that reduction of smoke emissions
22 called for in WAC 18-16 made it "imperative" that there be no increase in
23 acreage being burned during the phase-out period.

24 IV.

25 Appellant has farmed 920 acres at Rockford, Spokane County, for 29
26 years, raising wheat, barley, hay and turf grass for seed. Some of his

27 FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

1 acreage consists of steep-slope eroding hills. In the past two or three
2 years, having purchased some of this acreage after having rented it,
3 appellant decided it no longer was profitable to farm certain steep slopes
4 for grain or hay crops; he began to raise turf grass seed crops both for
5 profit and to halt erosion of topsoil.

6 V.

7 Appellant did not request turf grass burning permits of respondent
8 in 1971 or 1972. In 1973 he applied for and was granted approval by
9 respondent for a burning permit for 20 acres seeded to turf grass in 1972.

10 VI.

11 On June 25, 1974, respondent informed appellant that his base acreage
12 for 1974 under the program explained in Finding of Fact II was 20 acres.
13 Appellant, contending he had planted 35 additional acres in 1973 with
14 burnable turf grass on erosion-prone portions of his farm, protested the
15 20-acre base acreage allotment. That allotment was the subject of this
16 appeal.

17 VII.

18 Under date of July 24, 1974, appellant applied to respondent for a
19 1974 burning permit of 55 acres, including the 20 acres seeded in 1972
20 and the 35 acres seeded in 1973. Through an administrative error, since
21 confessed, respondent approved this permit for 55 acres.

22 VIII.

23 Appellant, amending his appeal by testimony at the hearing on this
24 matter, now seeks as his base acreage for 1975 the 55 acres for which he,
25 erroneously, was given a 1974 burning permit. He contends he requires
this to control erosion on steep slopes on his farm.

27 FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

IX.

Respondent, in setting base acreage allotments for Spokane County turf grass growers, has used only the 1971, 1972 and 1973 burning permit acreage applications as described in Finding of Fact II. Respondent never has used 1974 datum and never has made an exception, for hardship or other reasons.

X.

Any Conclusion of Law hereinafter recited which is deemed to be a Finding of Fact is adopted herewith as same.

From these Findings, the Pollution Control Hearings Board comes to these

CONCLUSIONS OF LAW

I.

Appellant has had the advantage of respondent's error; he was permitted to burn 55 acres in 1974, 35 acres more than the base acreage to which he was entitled. So be it; what is done is done.

However, that error should not be compounded into perpetuity. Appellant's base acreage is 20, not 35, acres. To hold appellant to those 20 acres will not deprive him of anything he might have done in reliance on the erroneous 55-acre permit; the 35 acres in excess of 20 acres were planted by him in 1973, one year prior to respondent's permit error.

II.

As to appellant's contention that he requires the 35 additional acres for erosion control, we note the language of WAC 18-16-030 which mandates respondent to weigh "the applicant's need to carry out such

FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

burning . . . against the public's interest in clean air." Respondent has weighed the conflicting interests involved herein and has come down on the side of clean air. Respondent's base acreage program is consistent with WAC 18-16, is fair and impartial to all burning permit seekers, is neither arbitrary nor capricious and should be sustained.

III.

Any Finding of Fact herein recited which is deemed to be a Conclusion of Law is adopted herewith as same.

Therefore, the Pollution Control Hearings Board issues this

ORDER

The appeal is denied and appellant's base acreage of 20 acres as determined by respondent is sustained.

DONE at Lacey, Washington this 12th day of May, 1975.

POLLUTION CONTROL HEARINGS BOARD

Chris Smith
CHRIS SMITH, Chairman

Walt Woodward
WALT WOODWARD, Member

FINDINGS OF FACT,
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